

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OLC 71-0296

APR 29 1971

Honorable Richard Helms  
Director, Central Intelligence Agency  
Washington, D.C. 2050

ATTENTION: Mr. John Maury  
Legislative Counsel

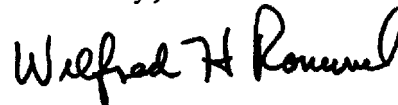
Dear Mr. Helms:

This will refer to your recent letter expressing the agency's views on a Civil Service Commission draft bill, "Relating to age requirements for appointment to positions in executive agencies and in the competitive service."

I am enclosing for your information a copy of the revised Civil Service Commission bill as cleared by this Office.

To insure a uniform and consistent executive branch policy on age limits in Federal employment, the bill has been revised to vest in the President, rather than in the Civil Service Commission, as initially proposed, authority to establish maximum entry age limits for positions in the competitive and excepted service.

Sincerely,



Wilfred H. Rommel  
Assistant Director for  
Legislative Reference

Enclosure



CHAIRMAN

UNITED STATES CIVIL SERVICE COMMISSION  
WASHINGTON, D.C. 20415

Honorable Carl Albert  
Speaker of the U. S. House  
of Representatives  
Washington, D. C. 20515

Dear Mr. Speaker:

The Commission is submitting for the consideration of the Congress proposed legislation "Relating to age requirements for appointments to positions in Executive agencies and in the competitive service." There are enclosed: (1) a draft bill, (2) sectional analysis, and (3) a statement of purpose and justification.

The proposed legislation would reaffirm the Government's clear policy against age discrimination in employment and would take the desirable step of extending that policy to positions in the excepted service. It would, however, recognize the need for providing some flexibility in this area in place of the present outright ban on maximum age limits for entry into the competitive service. Accordingly, the proposed legislation would authorize the President, or such agent as he may designate, to establish maximum age limits for entry into civil service positions in Executive agencies and in the competitive service when age is found to be a bona fide occupational qualification reasonably necessary to the performance of duties. The authority proposed for the President would be similar to that now held by the Secretary of Labor for private industry under the Age Discrimination in Employment Act of 1967 (81 Stat. 602).

The conditions that argue for the setting, administratively, of appropriate age limits in private industry apply with equal force in the Federal service. A number of Federal agencies have indicated that they will seek authority from the Congress to establish maximum age limits for entry into several types of positions. In the Commission's view it is far more desirable for such limits to be set administratively than it is for these limits to be set by statute on an occupation-by-occupation and agency-by-agency basis. In the interest of uniformity and appropriate control, this authority should be vested in the President as part of his general authority over civil service employment in Executive agencies and the competitive service.

The Office of Management and Budget advises that there would be no objection from the standpoint of the Administration's program to the submission of the proposal.

A similar letter is being sent to the President of the Senate.

By direction of the Commission:

Sincerely yours,

Chairman

Enclosures

A BILL

Relating to age requirements for appointments to positions  
in Executive Agencies and in the competitive service

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subchapter II of chapter 71 of title 5, United States Code, is amended by adding at the end thereof the following:

"§ 7155. Maximum-age entrance requirement

"It is the policy of the United States to promote employment of persons based on their ability rather than age and to prohibit arbitrary age discrimination in employment in the Federal service. A maximum-age requirement may be applied in making an appointment to a position in an Executive agency or in the competitive service only when the President, or such agent as he may designate, has established this requirement on the basis of a determination that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of the position."

(b) The analysis of subchapter II of chapter 71 of title 5, United States Code, is amended by inserting the following new item after item 7154:

"7155. Maximum-age entrance requirement."

SEC. 2. Section 3307 of title 5, United States Code, is repealed.

SEC. 3. Public Law 91-73 approved September 26, 1969 (83 Stat. 116) is repealed.

### Section Analysis

Subsection (a) of the first section of the draft bill amends subchapter II of chapter 71, title 5 of the United States Code, (Antidiscrimination in Employment), by adding a new section. The new section 7155 contains a policy statement and provides that a maximum-age limit for appointment to a position in an Executive agency or the competitive service can be established only when the President, or such agent as he may designate, finds that age is a bona fide occupational qualification reasonably necessary to the performance of the duties of a position.

Subsection (b) of the first section is a technical amendment.

Section 2 repeals the current provision of law that provides that no appropriated funds may be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

Section 3 repeals the authority of the Secretary of the Interior to determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police may be made.

## Statement of Purpose and Justification

### Purpose

The bill would substitute for the present outright ban on establishment of maximum age limits for entry into the competitive service a provision authorizing the President, or such agent as he may designate, to establish maximum age limits for entry into civil service positions in Executive agencies and the competitive service when age is found to be a bona fide occupational requirement reasonably necessary to the performance of duties. The proposed provision would also extend the Government's clear policy against age discrimination to positions in the excepted service. Aside from the change in coverage, the primary effect of the proposal would be to give the President an administrative authority over Federal positions generally parallel to the authority already granted to the Secretary of Labor for positions in private industry under the Age Discrimination in Employment Act of 1967 (81 Stat. 602).

### Justification

Age, by itself, should never be a bar to employment, either in private industry or in the Federal Government. At the present time, a statutory provision prevents the establishment of maximum entry ages for appointments in the Federal competitive service, but no similar provision governs appointments in the excepted service in Federal agencies. In keeping with the national policy against age discrimination, it is highly desirable to extend the prohibition against establishing age limits to positions in the excepted service. But it is equally desirable that a degree of flexibility, similar to that already existing for positions in private industry, be provided for Federal positions to permit exceptions without the necessity for Congressional action in each case when age is found to be a bona fide occupational qualification.

Congress established the present policy against age discrimination in Federal employment in 1956 when it wrote into the Independent Offices Appropriation Act (70 Stat. 355) a prohibition against the use of appropriated funds to pay the salary of any Federal employee who sets a maximum age for entry into any position in the competitive service. Now codified in section 3307, title 5 of the United States Code, the law makes no provision for administrative exceptions. A Federal agency that feels it needs relief from the strict letter of the law must turn to Congress for such relief. The Department of the Interior took its case to Congress in 1969 for the United States Park Police and was successful. Congress enacted Public Law 91-73 in September 1969, authorizing the Secretary of the Interior to set minimum and maximum age limits in the appointment of Park Police.

In light of the willingness of Congress to authorize a maximum entry age limit for one group, it has been indicated that other Federal agencies desire similar authority.

The Civil Service Commission believes there is justification for setting maximum age limits for entry into certain positions in the Federal service. But it believes it is far more desirable for such limits to be set administratively than it is for these limits to be set by statute on an occupation-by-occupation and agency-by-agency basis. In the interest of uniformity and appropriate control, this authority should be vested in the President as part of his general authority over civil service employment in Executive agencies and the competitive service.

Granting the President this authority would be in keeping with the principles expressed in the Age Discrimination in Employment Act of 1967. Among other things, that Act makes it unlawful for any employer in the private sector to refuse to hire an individual because of his age. At the same time, however, the Act recognizes that age can be a factor in employment, for its prohibitions do not apply "where age is a bona fide occupational qualification reasonably necessary to the normal operation of a business." The Secretary of Labor is granted the authority to "establish such reasonable exemptions to and from any and all provisions of this Act...." The considerations that argue for the setting, administratively, of appropriate age limits in private industry apply with equal force in the Federal Service.

In short, the fact that age is a factor in certain employment situations has been recognized by Congress in its enactments. There is under current law an orderly procedure for setting appropriate age limitations in the private sector. Although no such procedure exists now for Federal positions, the need for one is equally justified.

No additional appropriation would be needed to carry out the provisions of this bill. Administrative costs would be minimal.

19 February 1971

Mrs. Naomi R. Sweeney  
Office of Assistant Director  
for Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mrs. Sweeney:

This is in response to your request for our views on the Civil Service Commission's draft bill "Relating to age requirements for appointments to positions in Executive agencies, and in the competitive service."

The draft bill extends the current ban on maximum age limits for entry into the competitive service to include all civil service positions. It also authorizes the Civil Service Commission to except specific positions from the ban.

It is understood that the chief aim of the draft bill is to eliminate the necessity for legislation for each exception to the current outright ban. Since Agency positions are not within the competitive service, we have no substantive comments on the need for such relief.

The provision in the draft bill for Civil Service Commission review of the qualifications and responsibilities of positions in order to make a determination that age is a bona fide occupational qualification reasonably necessary to the performance of duty does present a problem, however. This external review would conflict with the statutory security responsibilities placed upon the Director of Central Intelligence "...for protecting intelligence sources and methods from unauthorized disclosure;" (50 U.S.C. 401). The nature of Agency positions and the duties performed by the incumbents, are inextricably related to the security responsibilities of the Director of Central Intelligence.



In recognition of the general security considerations which are here involved, the Central Intelligence Agency Act of 1949 provides, "Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including - (1) personal services, including personal services without regard to limitations on types of persons to be employed, ..." (50 U.S.C. 403j). Subsequently, and as a correlative of this authority and the Director's statutory responsibility, CIA positions have been specifically exempted from statutes governing civil service positions, e. g. the Classification Act of 1949 and the Personnel Rating Act of 1950.

In view of the above considerations, it is requested that CIA positions be specifically exempted from the provisions of the draft bill. Such action is completely consistent with what has been proposed and approved in the past in connection with similar legislation. Suggested language is enclosed.

Sincerely,



John M. Maury  
Legislative Counsel

Enclosure

Distribution:

Original & 1 - Adse  
1 - Subject file  
1 - OLC Chrono  
OLC:LLM:rcr (19 February 1971)

**ATTACHMENT**

**Proposed amendment:**

**"Sec. 4. This Act does not apply to positions in or under the Central Intelligence Agency."**

OMB file

Cy of Personnel attach  
very early sent to [unclear]

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☐ CONFIDENTIAL ☐ SECRET

### ROUTING AND RECORD SHEET

SUBJECT: (Optional) CSC Proposed Legislation inre Maximum Age Requirement for Appointment

FROM: Office of Legislative Counsel *DM*

EXTENSION

NO.

DATE 4 May 1971

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

OGC

2.

DDS (Mr. Wattles)

3.

Director/Personnel

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

1. This is submitted for your information. If you believe that further action is required, please let us know.

2. Per attached, OMB has cleared for transmittal to Congress CSC's proposed legislation prohibiting maximum age requirements for appointment to Executive agencies.

3. We did not get full exemption from the proposed legislation as requested (see Agency views to OMB attached), but the authority for making exceptions to the rule has been vested in the President (or such agent as he may designate) rather than CSC. This approach parallels 5 U.S.C. 7151, 7152, 7153 proscribing employment discrimination because of race, marital status, physical handicap, etc. It is recognized that the President might designate CSC as his "Executive agent" but it would seem to be impolitic, to say the least, to raise the "external review" objection that we did when the authority for exception was vested in CSC.